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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

PETER FRANK RICCA,

Defendant and Appellant.

C046481

(Super. Ct. No. CM020435)

As part of a negotiated plea agreement, defendant Peter Frank Ricca pled no contest to inflicting a corporal injury on his spouse within seven years of having suffered a conviction for the same offense (§ 273.5, subd. (e) - count one)¹ in exchange for dismissal of one count of kidnapping (§ 207, subd. (a) - count two), one count of making a criminal threat (§ 422 - count three), and an allegation that he personally used a dangerous and deadly weapon in the commission of counts two and

¹ Undesignated statutory references are to the Penal Code.

three. Defendant was sentenced to the midterm of four years in prison, and ordered to pay a \$600 restitution fine (§ 1202.4, subd. (b)), a parole revocation fine in the same amount (§ 1202.45), and a court security fee of \$20 (§ 1465.8, subd. (a)(1)). The court ordered drug and alcohol counseling (§ 1203.096) and directed defendant to provide law enforcement with two blood specimens, a saliva sample, thumbprints, and a full palm print impression of his hands. Defendant appealed.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief setting forth the facts of the case and, pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requesting the court to review the record and determine whether there are any arguable issues on appeal. Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. In response, defendant filed a brief in which he contends he did not commit the offense; that he pled no contest because he believed that he would be granted probation and ordered to enroll in a drug rehabilitation program; and that the probation report inaccurately reported facts related to the dismissed counts.

Defendant's assertion of innocence is foreclosed by his no contest plea, which admitted all of the facts necessary to support the conviction. (*People v. Robinson* (1997) 56 Cal.App.4th 363, 369.) Additionally, according to the probation report, the victim reported to law enforcement that defendant struck her in the face several times, and officers observed

visible bruising on her face. This evidence was sufficient for a conviction under section 273.5 (§ 273.5, subd. (c) [injury need only be slight]; *People v. Beasley* (2003) 105 Cal.App.4th 1078, 1085 [bruise sufficient to establish corporal injury under § 273.5, subd. (a); *People v. Kinsey* (1995) 40 Cal.App.4th [minor injury sufficient]), and provided a factual basis for the plea (*People v. Holmes* (2004) 32 Cal.4th 432, 442).

Defendant's assertion that he was misled with respect to probation also lacks merit. The record does not reflect any promises regarding disposition of the case. Defendant pled no contest to count one in exchange for dismissal of the counts alleging kidnapping and making a criminal threat, as well as the personal use enhancement. Defendant thus benefited significantly from the plea bargain. When the court asked defendant if any additional promises had been made with respect to the plea, defendant replied, "No." Defendant's claim that he was promised probation is without factual support in the record.

Turning to the alleged factual inaccuracies in the probation report, that report (which in turn was based on police reports) recited that defendant awakened the victim and forced her to drive him to a convenience store while he wielded an axe. When the victim attempted to hide inside the store, defendant spotted her and slid his finger across his throat several times, which defendant took as a death threat. In his supplemental brief, defendant claims that the axe was merely a roofing tool, and that he did not threaten the victim, but in fact was trying

to calm her down because she was hallucinating. Defendant raised these concerns in his oral statement to the probation officer (which was set forth in the probation report) and in defendant's written statement to the court (which was appended to the probation report). The record does not show that the court relied on inaccurate facts in deciding to impose the midterm sentence on count one. In any event, defendant made no formal objection to the statement in the probation report, thereby waiving any claim with respect to factual inaccuracies. (*People v. Scott* (1994) 9 Cal.4th 331, 353, fn. 15.) Finally, the plea was conditioned on a *Harvey*² waiver as to the dismissed counts. Therefore, the sentencing court properly could consider the facts relating to these counts in imposing sentence with respect to count one. (*People v. Goulart* (1990) 224 Cal.App.3d 71, 80 ["A defendant who signs the typical [*Harvey*] waiver form agrees to allow the sentencing judge to consider his entire criminal history, including any unfiled or dismissed charges. [Citation.]".])

Having undertaken an examination of the entire record, we find no arguable error.

² *People v. Harvey* (1979) 25 Cal.3d 754 at page 758.

DISPOSITION

The judgment is affirmed.

SIMS, Acting P.J.

We concur:

DAVIS, J.

RAYE, J.